



Montoya, Darlene <dmontoya@nmag.gov>

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## Use of Force and Officer Involved Shooting

2 messages

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**Stephen Barnett** <chiefs.barnett@tularosa.net>  
To: dmontoya@nmag.gov  
Cc: Stephen Barnett <chiefs.barnett@tularosa.net>

Wed, Jan 11, 2017 at 12:09 PM

Sir,

I am in the middle of revamping and bringing up to date my department's SOP. Attached are the Use of Force and Officer involved shooting Policy currently updated. Prior to sending these to you my department reviewed them in a training session along with the person, (John Tate) who is doing the research and updating and revamping our current SOP. I hope this will assist you in your endeavor.

Chief Stephen J. Barnett

Carrizozo Police Department



**Use of force - ofc inv shoot.pdf**  
3316K

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**Montoya, Darlene** <dmontoya@nmag.gov>  
To: Stephen Barnett <chiefs.barnett@tularosa.net>

Wed, Jan 11, 2017 at 12:18 PM

Thank you so much Chief Barnett. We will review and let you know if we need anything else. Have very good day.

[Quoted text hidden]

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Darlene Montoya, Administrator  
New Mexico Attorney General's Office  
408 Galisteo Street  
Santa Fe, New Mexico 87501  
[\(505\) 490-4854](tel:5054904854)

<b>POLICE DEPARTMENT</b>		<b>RULES AND REGULATIONS</b>	
<b>SUBJECT: USE OF FORCE</b>		<b>NUMBER:</b>	
<b>EFFECTIVE DATE:</b>		<b>REVIEW DATE:</b>	
<b>AMENDS/SUPERSEDES:</b>		<b>APPROVED:</b>	
		<b>Chief of Police:</b>	

**POLICY:** It is the policy of the Carrizozo Police Department that physical force will only be employed within constitutional bounds and will be applied efficiently and as is necessary to bring a subject under control who is illegally resisting arrest.<sup>1</sup> Once a resisting subject is brought under control, any incurred injuries will receive appropriate medical attention. Incident reports will document all occurrences of an officer's application of physical force.

#### **I. DEFINITIONS:**

**Force** is any action by a police officer that modifies the behavior of a subject. Under this definition "force" covers the gamut from an officer's mere presence to deadly force.

**Coercive force** is a verbal command or application of physical force in a non-consensual encounter. This is in contrast to verbal conversation of a physical touching that is objectively consensual such as rescue.

**Physical force** is the application of any of the various techniques to influence a resisting person's compliance with an officer's commands. In general, "physical force" includes: verbal commands and notice; empty-hand controls; empty-hand pain compliance techniques; chemical, impact and electronic pain compliance techniques; and deadly force. It is expected that verbal commands may accompany application of hands-on pain compliance techniques.

**Deadly force** is any employment of any force that, if properly applied and effective, is likely to cause death or great bodily harm.

**Severity of crime** in the context of this policy means the tendency of a crime to involve violence or threat of violence. Severity of crime specifically does not involve the statutory categorization of a crime as misdemeanor or felony.

**Balance** in the context of this policy means consideration of the immediate, dangerous or violent nature of any crime(s) involved and consequent risks to the public, the officer and the subject posed by a failure to control a resisting subject at the time and place of encounter, as opposed to some delay. For example, a person driving at night with no headlights is dangerous, but not violent; a person threatening suicide poses a violent risk only towards himself; a person who has embezzled large amounts of money has committed a serious felony, but poses no risk by itself of physical harm to anyone. Likewise, balance includes the obligation of an officer not to allow a traffic stop for and subsequently involving only an inoperative tail light to escalate to a shooting.

<sup>1</sup> Under New Mexico law, it is illegal to resist even an illegal arrest. The only right to resist arrest is when the officer uses excessive force, and that is under the subject's right to self-defense. See State v. Chamberlain, 1991-NMSC-094, §57, Fugere v. State, 1995-NMCA-040, §25 and 77 A.L.R. 3d 281



## II. PROCEDURES:

Physical force will only be applied in manners that are compliant with the constitutional bound of "objectively reasonable," which means the force is applied in good faith, to an extent necessary to restore order and/or bring a resisting subject under control of the law, but with balance and limit indicated by the severity of the crime(s) involved.

Physical force will never be applied maliciously, sadistically for the purpose of extrajudicial punishment or to cause harm.

## III. DISCUSSION:

There is a logical and physical continuum of force from an officer's mere presence to voice commands to the application of pain compliance techniques.<sup>2</sup> This presence by the officer may be intentional or not; however the officer must recognize the potential influence on events that may be caused by his presence.

As stated above, there are discrete segments of this force continuum that may overlap in both use and justification. Verbal commands must precede and be ineffective to justify the use of pain compliance techniques. Thus, the intentional use of non-verbal physical force will only be applied in response to a person's failure to obey an officer's command. In that regard, the subject is effectively in charge and the officer is merely responding to the subject's level of resistance combined with the crime(s) of the subject. Within constitutional bounds, these two factors, resistance and type of crime, will determine the levels of force that may reasonably be applied by the officer.<sup>3, 4, 5</sup>

The attached use of force models are included as examples of the concept of resistance-response escalation. The order of officer responses, from verbal commands to deadly force, is not a fixed escalation that must be followed step-wise. On the contrary, the officer will respond to the circumstances that face him. While it is conceivable that events might dictate his first act is the use of deadly force, it is otherwise required that a verbal warning be given before the use of deadly force.<sup>6</sup> That is, because the officer is reacting to the level of resistance presented by the subject to be brought under control, there can be no specific order of control techniques to be employed by the officer, either of increasing or decreasing in severity or intensity, that the officer must follow.<sup>7</sup> The officer will continually assess the level of force he is applying and adjust that force to the degree necessary to overcome the subject's level of resistance. Likewise, the officer will decrease his level of force to the degree the subject becomes compliant.

The Department provides an array of training and tools to be used in the application of coercive force. The tools include chemical sprays, expandable batons, electronic control devices (e.g., Taser), and firearms. Under optimum circumstances, the baton and firearm should be considered the most extreme use of force tools as only these tools can be expected to achieve effect by tissue damage. However, the officer will choose the necessary response and tool(s) to be used to gain and maintain control based on the law, this policy and the totality of the circumstances, specifically including his physical capabilities, experience and available equipment.

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<sup>2</sup> The law recognizes that the mere sight of an officer may prompt a person's flight. *Illinois v. Wardlow*, 528 U.S. 119 (2000)

<sup>3</sup> For reference, see the Reactive Control Model graphic at appendix X. <http://www.pimall.com/nais/policuseforce.html>

<sup>4</sup> For reference, see the John C. Desmedt Use of Force Model at appendix Y

<sup>5</sup> For reference, see the FLETC, Univ. of Illinois Use of Force Model at appendix W

<sup>6</sup> Note that 30-2-6.B NMSA directs that, "[w]henver feasible, a public officer or employee should give warning prior to using deadly force." However, warning shots are never to be fired.

<sup>7</sup> For reference, see Samuel Faulkner's Ohio Use of Force Model at appendix Z

#### **IV. CAUTION:**

It is possible for the officer by his conduct to instigate otherwise uncalled for resistance by a person. The law recognizes "fighting words" as speech "which tend[s] to incite an immediate breach of the peace."<sup>8</sup> While a police officer is expected to exercise restraint to such provocations, a subject may be justified in taking offence and thus respond negatively by vocal rudeness or physical resistance. Therefore, officers will refrain from the use of condescending, vulgar, profane or obscene language when addressing individuals.

Likewise, an officer could unnecessarily place himself in vulnerable positions. An example is engaging an adversary much larger and more powerful than the officer such that the officer has no controlling option but use of deadly force; another example is standing in the path of the vehicle of a resisting or escaping suspect such that deadly force appears a necessary defense to an officer created hazard. Officers will be thoughtful and attempt to avoid placing themselves in circumstances where their own actions create an unnecessarily heightened risk of harm such as would require otherwise unjustified use of force.<sup>9</sup>

Because use of force functionally involves the use of vehicles the officer will follow the specific guidance of the Carrizozo Police Department's vehicular pursuit policy. Likewise, the general considerations of when to initiate, continue or cease a foot or bicycle pursuit or even an attempted seizure of a person will also be guided by the severity of the crime(s) involved and risks to the public, the subject and the officer.

#### **V. REPORTS:**

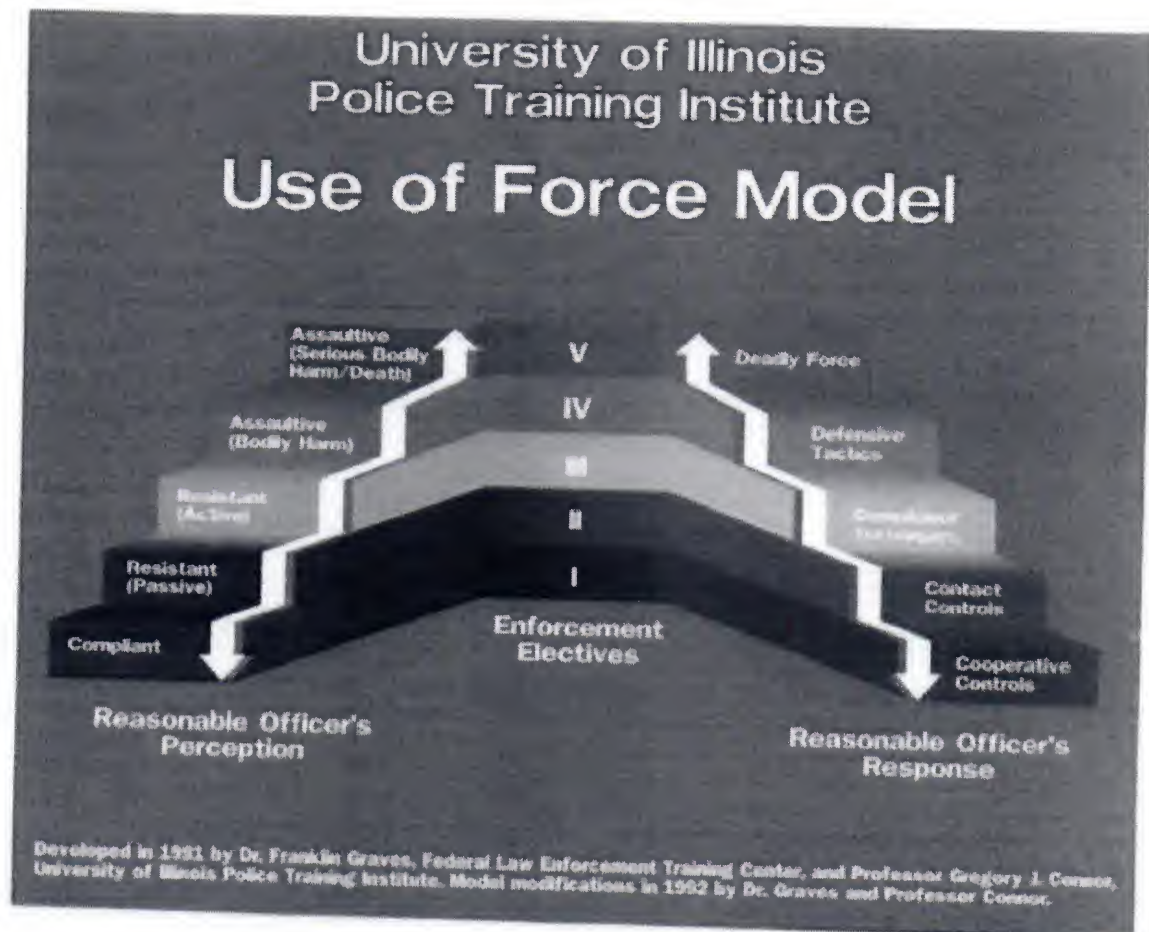
Every application of force that exceeds verbal commands will be documented in detail in an incident report. Facts and data to be included are: the time and place of the event; the identity of the person(s) upon whom force was applied; the type(s) of force; the justification(s); the identity of any witness; any apparent resulting injuries; photographs of any injuries; and any medical care provided.

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<sup>8</sup> State v. Correa, 2009-NMSC-051, §§ 23 – 26

<sup>9</sup> See in general State v. Mantelli, 2002-NMCA-033



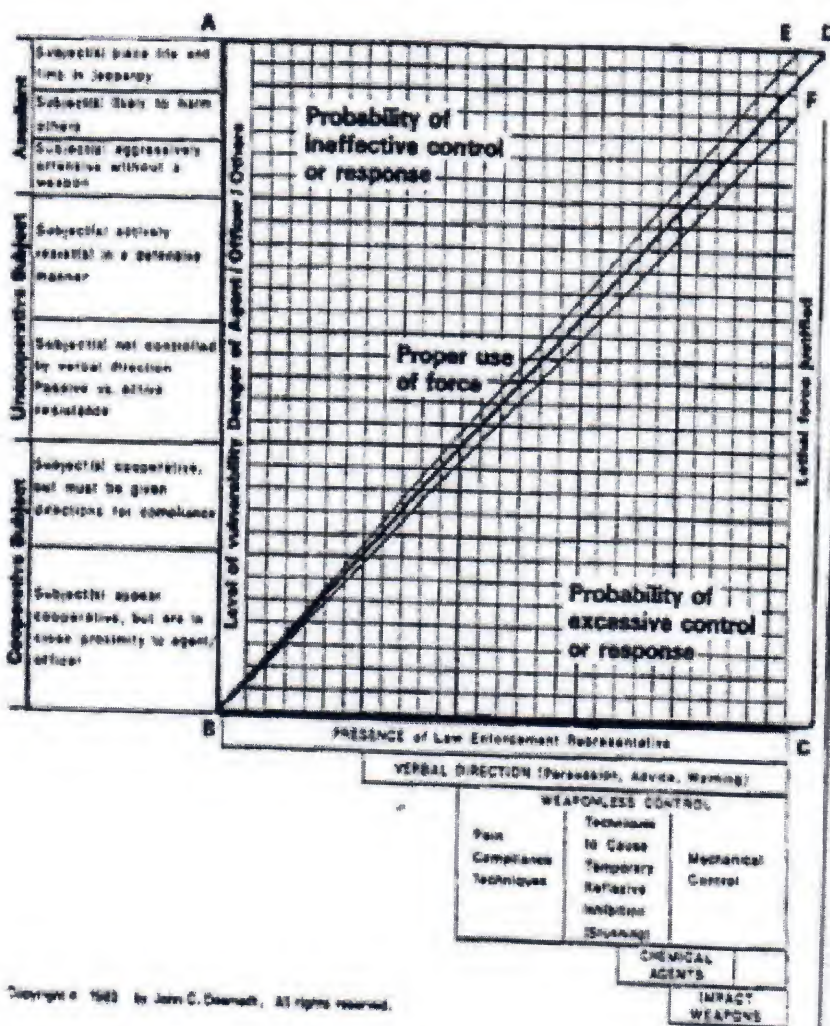


Appendix X

REACTIVE CONTROL MODEL™ (RCM)®					
SUBJECT BEHAVIOR		COOPERATIVE	NON-COOPERATIVE	UNARMED ASSAILANT	ARMED ASSAILANT
SUBJECT'S "BEHAVIORAL" CUES:		Responds to Directions and Custody: • COMPLIANT • RESPONSIVE • FOLLOWS DIRECTIONS	<b>Resists Custody By:</b> • Not Responsive to Directions • Evasive to Questions • Verbal Resistance or Body Posture • Pulling/Moving or Running Away	<b>Resists Custody By:</b> <div>             UNARMED THREATENING                           UNARMED ATTACK           </div>	<b>Resists Custody By:</b> <div>             ARMED THREATENING                           ARMED ATTACK (DEADLY ASSAULT)           </div>
CRIMINAL ACTIVITY CUES:		Unknown	Threat	Closes Distance	
OFFICER MENTAL CONDITION:		Type of Criminal Activity Investigating			
OFFICER'S ACTIONS:		Alert	Control	Active	Survival
PRESENCE		<b>Verbal Directions</b> • Authority • Knowledge • Command/Adherence • Positioning • Encouragement	<b>Verbal Persuasion</b> EMPTY HAND TECHNIQUES ASSESSMENT <small>Control Technique</small> CONTROL BY <small>Use of Force</small> Discretion Techniques Compliance Methods Low-impact Tap-Strikes Impact Tap-Strikes CHEMICAL AGENTS	<b>Verbal Commands</b> SHOW FORCE <small>Body Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of Force</small> <small>Use of 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# Appendix Y

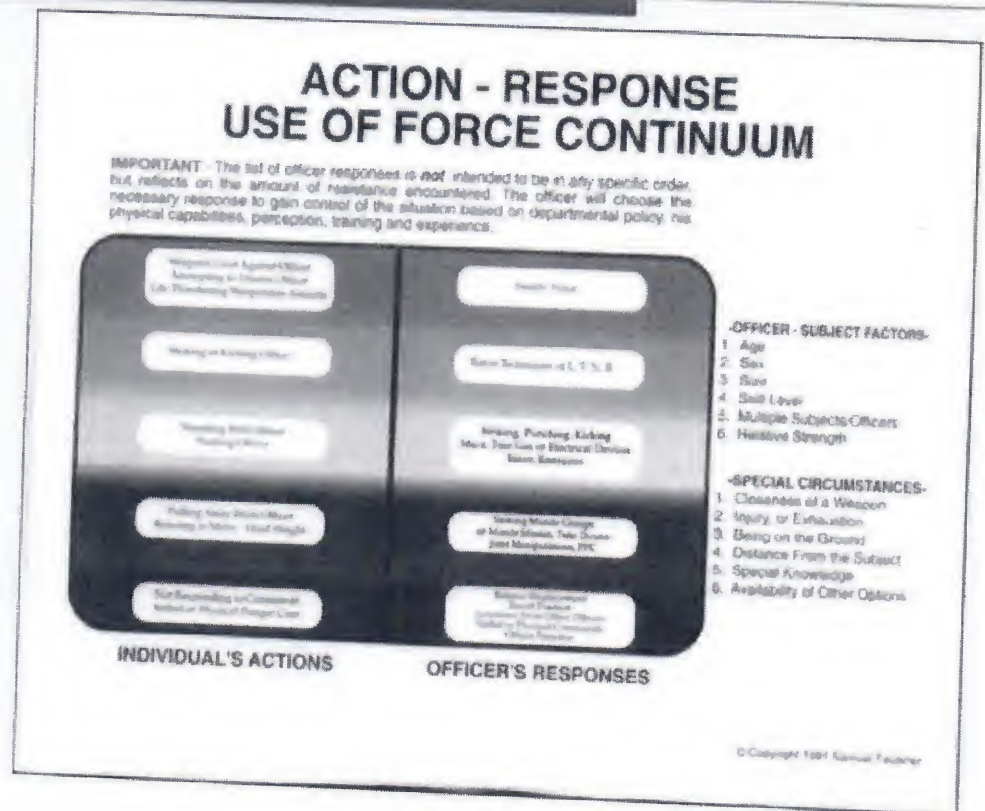
## Use of Force Model



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# Ohio Use of Force Model





<b>POLICE DEPARTMENT</b>	<b>POLICY &amp; PROTOCOL</b>
<b>SUBJECT: OFFICER INVOLVED SHOOTINGS <sup>1</sup></b>	<b>NUMBER:</b>
<b>EFFECTIVE DATE:</b>	<b>REVIEW DATE:</b>
<b>AMENDS/SUPERSEDES:</b>	<b>APPROVED:</b>
	<b>Chief of Police:</b>

<sup>1</sup> It is the policy of the Carrizozo Police Department that all discharges of a firearm by an officer, that are not unremarkable training events, will at least be documented by an incident report detailing the before, during, and after circumstances. The balance of this document details the protocols for other firearm discharge events.

- **Scope**

This document addresses 3 classes of officer involved shooting.

1. Non-Line of Duty
2. Line of Duty: Non-Human
3. Line of Duty: Human

- **Non-Line of Duty**

Non-Line of Duty shootings will be handled identically with any similar incident involving a citizen.

- **Line of Duty: Non-Human**

Line of Duty shootings of non-humans involves events such as putting down dangerous or injured animals, door breaching, firearms propelled tear gas projectiles, etc... In such instances, the officer(s) involved will file an incident report including but not necessarily limited to:

1. Time and place of incident.
2. Justifying circumstances, including why other alternatives were not available and/or not chosen.
3. Authorizing or requesting parties.
4. Witnesses.
5. Results and if involving an animal, disposition of remains

- **Line of Duty: Human**

Officer involved shootings involving another human are expected to be substantially traumatic for the officer and thus justify a special and sensitive protocol quite different from conventional investigations. Likewise, it is anticipated that a second agency will perform the bulk of any related investigations. This protocol is intended to incorporate such considerations.

- **General Considerations**

In general these are the major steps to be taken by the officer involved and responding officers:

1. Notify dispatch; Dispatch notify Chief; Chief notify the District Attorney.
2. Provide first aid to any injured individuals.
3. Secure the scene and all witnesses and evidence.
4. Check the officer involved for injury, shock and/or trauma.
5. Notify either Lincoln County Sheriff's Department or New Mexico State Police.
6. Take the officer involved to the police station.
7. Provide respectful emotional peer support and make him/her as comfortable as possible.
8. Advise officer(s) to make no statements.
9. Do not leave the officer alone, either at the station or, if possible, at his/her home.
10. The Chief should obtain enough facts to be able to make a statement for the press.

- **Discussion and Details**

First aid, security of the scene, and evidence are common actions and are to be performed in accordance with those standing procedures.

The first few hours after a shooting are a potentially emotional and confusing time for the officer(s) involved. Both physical and emotional stress and trauma may be present and may be amplified by the conduct of responding personnel. The officer(s) involved should remain under observation until it is clear no shock or undue anxiety is manifest. Memory and perceptual disturbances in the officer(s) following a shooting are common and normal. Responding officers must recognize these truths, provide emotional support, refrain from disarming the officer without providing a replacement sidearm, and refrain from asking other than immediately applicable questions.

1. If officer is injured, have another officer accompany the injured officer to the hospital. As appropriate, notify family. As necessary provide family transport to hospital.
2. As soon as possible, take the officer to the station where s/he will experience common surroundings; provide detached emotional support. Make the officer as comfortable as possible and refrain from questioning him/her about the incident. Should s/he begin to discuss or describe the incident, remind the officer that s/he may want to wait until s/he is less involved, more objective, has had time to get his/her facts full and in order, and has had access to an attorney to make any statements.
3. If applicable, allow officer to advise family of incident.
4. Do not leave the officer alone, either at the station or, if possible, at his/her home. While a remote possibility, the officer may experience destructive or negative self-doubts or react unfavorably to investigation, questioning, or treatment.
5. Based on the protocol of the investigating agency, consider reminding the officer what to expect: that his/her firearm(s), duty gear, and clothing may be taken for evidence and s/he may be requested to give urine and/or blood samples. Remind him/her that these are merely standard investigatory steps and s/he should not take offense.



- **Protocol for an Officer Involved Shooting.**

First aid, security of the scene, and evidence are common actions and are to be performed in accordance with those standing procedures.

1. Comply with the "Peace Officer's Employer-Employee Relations Act" (29-14 NMSA), the "investigation of peace officers" (29-14-4 NMSA), and the Law Enforcement Officers' Bill of Rights.
2. Administer *Miranda* and *Garrity* warnings as appropriate.<sup>2</sup>
3. Observe *Weingarten* rights as appropriate.<sup>3</sup>
4. Instruct officer not to talk to media.
5. Remove officer(s) from all duty for at least two days and then place on administrative duty while appropriate.
6. Arrange post-traumatic stress counseling and training.
7. Conduct internal affairs investigation according to standard procedures.
8. Anticipate perceptual (auditory and visual) distortions.
9. If more than one officer involved, interview first separately, then as a group.
10. In coordination with the investigating agency and evidence custodian, inspect firearm(s) for proper function.

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<sup>1</sup> References include IACP "Critical Steps after an OIS," IACP "investigation of OIS," Americans for Effective Law Enforcement (AELE), "Administrative Investigations of Police Shootings and Other Critical Incidents," PoliceOne.com, "How to ensure "fair, neutral, fact-finding" OIS," "American Psychological Ass'n, "Memory and the Operational Witness: Police officer recall of firearms encounters."

<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966); *Garrity v. New Jersey*, 385 U.S. 493 (1967)

<sup>3</sup> *National Labor Relations Board v. J. Weingarten, Inc.*, 420 U.S. 251 (1975)